

Study Em-458

October 4, 2000

First Supplement to Memorandum 2000-65**Early Disclosure of Valuation Data and Resolution of Issues
in Eminent Domain (More Comments on Tentative Recommendation)**

Attached to this supplementary memorandum as an Exhibit is a letter from Michael Nave of San Leandro. Mr. Nave recommends that the tentative recommendation be approved as drafted, with one exception. He concurs with the suggestion made in Memorandum 2000-65 that a property owner's prelitigation appraisal or settlement opinion should be protected from disclosure in trial. "Fairness should cut both ways."

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

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Michael R. Nave
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September 29, 2000

Nathaniel Sterling, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Law Revision Commission
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Re: Memorandum 2000-64
Memorandum 2000-65

Dear Nat:

Unfortunately, a heavy workload prevents me from submitting more detailed comments on the subjects of the above Memoranda. Suffice it to say that with regard to Memorandum 200-64, I agree completely with the observations of Richard Williams of Caltrans and the Staff's opinion that the proposal "is a solution in search of a problem."

With regard to Memorandum 2000-65, I concur with Justin McCarthy's suggestion that a condemnee's appraisal or settlement opinion be protected from disclosure in trial. Fairness should cut both ways.

I am somewhat amused by Gideon Kanner's suggestion that the appraiser who prepares the deposit appraisal be impeached if he subsequently testifies to a lower value. My amusement is not with Gideon's suggestion, but because in my local agency eminent domain practice, I cannot think of a single occasion when the Government Code Section 7267.2 appraisal (the "precondemnation appraisal") was not the prejudgment deposit appraisal as well. Thus, the immunity that attaches to the precondemnation appraisal is carried forward to the deposit appraisal.

I am sure that in the acquisition projects of larger public agencies, there can be large time lapses between the precondemnation appraisals and the deposit in court. That is not the case with most local public agencies. Once the agency receives the precondemnation appraisal, the resolution of necessity hearing and filing of the eminent domain lawsuit usually occur within 60 days.

With the exception of Justin McCarthy's recommendation noted above, I recommend to the Committee that Memorandum 2000-65 be approved without change.

Very truly yours,

MEYERS, NAVE, RIBACK, SILVER & WILSON

[Dictated / Not Read]

Michael R. Nave

c: Richard Williams, Caltrans

MRN:tmc
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